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SUMMARY

Glendale Broadcasting Company asks the Commission to rule, assuming that the Commission affirms the decision of Administrative Law Judge Joseph Chachkin in the Miami, Florida proceeding (MM Docket No. 93-75), that Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity) lacks the basic qualifications needed to retain the license of WHSG(TV), Monroe, Georgia.

Trinity is collaterally estopped from relitigating the issues tried in the Miami proceeding because each of the four requirements for collateral estoppel are met here.

Each of the factors the Commission looks at to determine the appropriate sanction for misconduct supports a holding that Trinity is not qualified to retain the WHSG(TV) license. The deception and abuse of process found by Judge Chachkin struck at the integrity of the Commission's processes. The misconduct was willful and intentional. The abuse of process was repeated and began at least sixteen years ago. Paul Crouch, the person who controls Trinity, was the primary participant in the misconduct. The misconduct was not limited to one station. Action must be taken against the Monroe license to deter future misconduct.

In order to expedite this proceeding, the Commission should either order Judge Chachkin to immediately prepare an initial decision on the short spacing issue specified against

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Glendale or certify the record on that issue to the Commission so it can decide that issue when it resolves Trinity's basic qualifications.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re Applications of)	MM Docket No. 93-156
)	
Trinity Christian Center of)	
Santa Ana, Inc., d/b/a TRINITY)	
BROADCASTING NETWORK)	File No. BRCT-911129KR
)	
)	
For Renewal of License of)	
Commercial Television Station)	
WHSB-TV, Monroe, Georgia)	
)	
and)	
)	
GLENDAL BROADCASTING COMPANY)	File No. BPCT-920228KE
)	
For Construction Permit)	
Monroe, Georgia)	

To: The Commission

**MOTION FOR RULING RE TRINITY'S QUALIFICATIONS
AND RELATED RELIEF**

Glendale Broadcasting Company (Glendale) asks the Commission to rule, following the issuance of a decision by the Commission in the Miami, Florida comparative proceeding (MM Docket No. 93-75), that Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity or TBN) lacks the basic qualifications necessary to remain the licensee of WHSG(TV), Monroe, Georgia. Glendale also asks the Commission to take steps to ensure an expeditious resolution of the short spacing issue specified against Glendale in this proceeding.

I. BACKGROUND

On April 7, 1993, the Commission released a hearing designation order specifying the following issues against Trinity Broadcasting of Florida, Inc. (TBF), the licensee of commercial television station WHFT, Miami, Florida:

(a) To determine whether Paul F. Crouch, Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (TBN) or its affiliates exercised de facto control over National Minority TV, Inc. (NMTV).

(b) To determine whether NMTV, Paul F. Crouch, TBN or its affiliates or principals abused the Commission's processes by using NMTV to evade the provisions of Section 73.3555(e) of the Commission's Rules and/or by using NMTV to improperly claim minority preferences in LPTV applications.

(c) To determine, in light of the evidence adduced pursuant to issues (a) and (b), whether Trinity Broadcasting of Florida, Inc. is qualified to remain a Commission licensee.

Trinity Broadcasting of Florida, Inc., 8 FCC Rcd 2475, 2481 (1993). The Commission designated those issues in light of evidence showing "that TBN and its employees may control nearly every aspect of NMTV's operation." 8 FCC Rcd at 2480. The Commission stated that if Paul Crouch or Trinity exercised de facto control over NMTV, they (a) controlled more television stations than allowed by the Commission's multiple ownership rules, and (b) improperly claimed minority preferences in LPTV and translator applications.

The Commission also stated that adverse resolution of these issues "could have implications for all stations licensed to NMTV, TBN, and its affiliates..." 8 FCC Rcd at

2481. While it declined to immediately designate the other renewal applications for hearing, the Commission ruled that if the issues were resolved adversely to Trinity and NMTV, "the Commission will determine what actions are appropriate in connection with the stations licensed to those entities." Id.

Shortly afterwards, the Chief, Video Services Division designated for hearing Trinity's application for renewal of the WHSG license and Glendale's mutually exclusive construction permit application for the same channel. Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network, 8 FCC Rcd 4038 (MMB 1993). Glendale had filed a petition to deny against the WHSG renewal application seeking the same issues it sought in Miami. The staff ruled it was inappropriate to specify issues in this proceeding because issues were already specified in Miami. The staff conditioned any grant of Trinity's renewal application upon "whatever action the Commission deems appropriate" when the issues were resolved in the Miami proceeding. Id. at n.1.

On November 6, 1995, Administrative Law Judge Joseph Chachkin (who is also the Presiding Judge in this proceeding) released a decision resolving both qualifying issues adversely and holding that "TBF's disqualification and the loss of its license is mandated." Trinity Broadcasting of Florida, Inc., 10 FCC Rcd 12020, 12062 (ALJ 1995) (I.D.). In short, the Presiding Judge concluded that it was "beyond question" that Trinity controlled NMTV and that NMTV "has marched in absolute

lockstep with TBN." I.D., ¶304 (10 FCC Rcd at 12057). He found, "Crouch and TBN's complete domination of [NMTV] permeates every facet of [NMTV's] affairs." I.D., ¶309 (10 FCC Rcd at 12058). Judge Chachkin concluded that Paul Crouch and TBN engaged in intentional misconduct and abused the Commission's processes. He also found that Crouch and Trinity "are guilty of willful misrepresentations" and are "also guilty of lack of candor in concealing facts concerning the true identity" of NMTV. I.D., ¶331 (10 FCC Rcd at 12062). He finally concluded, "There is no meaningful difference between TBF and TBN" (I.D., ¶333, 10 FCC Rcd at 12062) and disqualified TBF.

Trinity has filed exceptions to the initial decision. Glendale and the Mass Media Bureau have filed reply briefs. The Bureau supports Trinity's disqualification. While Glendale believes that the overwhelming body of evidence requires affirmance of the Miami initial decision, the proper forum for resolving that issue is the Miami proceeding. The purpose of this pleading is to raise another issue: assuming that the Commission affirms the disqualification of TBF in the Miami proceeding, what effect does that ruling have on Trinity's qualifications to hold the Monroe license? Glendale urges the Commission to rule contemporaneously with its affirmance of the Miami decision that Trinity lacks the basic qualifications to retain the WHSG license.

II. APPLICABILITY OF COLLATERAL ESTOPPEL

Trinity is collaterally estopped from relitigating the Miami issues in this proceeding. A party is collaterally estopped from relitigating those issues tried in another proceeding when: (1) the issues tried were identical to that previously litigated, and the issues were essential to the prior decision, (2) the prior adjudication has become a final decision on the merits, (3) the party to be estopped was a party to the prior adjudication, and (4) the estopped party had a full and fair opportunity to litigate the issues in the prior proceeding. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331-333 (1979), Oldham v. Pritchett, 599 F.2d 274, 279 (8th Cir. 1979), Ocean Pines LPB Broadcast Corp., 5 FCC Rcd 5821, 5825 (Rev. Bd. 1990).

All four requirements are met here. (1) The issues for which Glendale is seeking collateral estoppel are the same basic qualifications issues tried in the Miami case. (2) Once the Commission issues a decision in the Miami proceeding, that decision will become sufficiently final for purposes of collateral estoppel. RKO General, Inc., 82 FCC 2d 291, 315 (1980), Imagists, 4 FCC Rcd 3749, 3752 n.1 (Rev. Bd. 1989). (3) Trinity was a party to the Miami proceeding. It was made a party to the Miami proceeding to facilitate the use of collateral estoppel. See Trinity Broadcasting of Florida, Inc., supra, 8 FCC Rcd at 2481. (4) Trinity was given a full and fair opportunity to litigate the Miami issues.

III. FACTORS MANDATING DISQUALIFICATION

A. Legal Background

The Commission has historically looked to a variety of factors to determine whether misconduct that affects a broadcaster's qualifications to hold one license impacts that broadcaster's qualifications to hold other licenses. That determination is made on a case-by-case basis. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 59 RR 2d 801, 831 (1986) (§92) (hereinafter, Character Policy Statement). In determining the appropriate sanction for misconduct, such as multiple disqualifications, the Commission has looked at such factors as the nature and willfulness of the misconduct, the frequency of the behavior, the time period of the misconduct, the involvement of owners in the misconduct, and the interest in deterring future misconduct by that licensee and other licensees. Id., 59 RR 2d at 833-834 (§§102-103).

Case law provides additional factors that must be taken into consideration. The Commission has historically applied more severe sanctions for misconduct when a broadcaster has previously been found to violated Commission rules and policies. For example, in Star Stations of Indiana, Inc., 51 FCC 2d 95, 96-97 (1975), one of the important factors in the Commission's decision to deny renewal of all of a multiple owner's licenses was the fact that additional misconduct took place after prior findings of misconduct. Another relevant

factor is whether the misconduct was limited to one station or whether the misconduct permeated the licensee's entire operations. When a licensee's misconduct only occurs at one station, the Commission will not be disposed to disqualify the licensee totally. See, e.g., KFPW Broadcasting Co., 47 FCC 2d 1090, 1095-1096 (¶12) (1974), Faulkner Radio, Inc., 88 FCC 2d 612, 616-617 (¶13) (1981). In contrast, total disqualification is appropriate when a licensee exhibits "a pervasive pattern of misrepresentation especially when conjoined with gross ineptitude or flagrant disregard of rules." Id. (¶12), Vinita Broadcasting Co., Inc., 30 FCC 2d 458 (1971).

All of these factors in the Character Policy Statement and in the case law lead to the conclusion that disqualification of Trinity in the Monroe proceeding is mandated if the Miami disqualification is affirmed.

B. Nature of Misconduct

As described in the Miami decision, the misconduct by Trinity's principals struck at the integrity of the Commission's processes and was accompanied by repeated attempts to deceive the Commission. In the words of the Presiding Judge:

The findings establish that TBN and Crouch created a "sham" corporation to take advantage of the minority preference. Although TTI/NMTV was given the trappings of a "minority controlled" corporation, the reality of the TBN and TTI/NMTV relationship was well known to TBN and Crouch. Crouch's motive was clear - to acquire and utilize

all available communications media to carry out TBN's mission.

I.D., ¶330 (10 FCC Rcd at 12061).

The Commission has taken repeated steps to eliminate what it perceives to be a very serious problem - abuse of its processes. Report and Order in MM Docket No. 87-314, 5 FCC Rcd 3911 (1990), First Report and Order in BC Docket No. 81-742, 4 FCC Rcd 4780 (1989), Revision of Application for Construction Permit for Commercial Broadcast Station, 4 FCC Rcd 3853 (1989). This case presents the Commission with an especially invidious abuse of its processes - the abuse of a rule designed to encourage the participation of minorities in broadcasting to circumvent the Commission's ownership restrictions.

C. Willfulness of Misconduct

The Presiding Judge concluded that the misconduct was intentional and accompanied by deception. In his words:

The repeated concealment of material facts concerning the TTI/NMTV relationship with TBN cannot be sluffed off as an unintentional mistake. It was intentional deception since disclosure would have thwarted TBN's and Crouch's ambitions. TBN and Crouch are guilty of willful misrepresentations in falsely representing in application that TTI/NMTV was under minority control. It is also guilty of lack of candor in concealing facts concerning the true identity of TTI/NMTV. The Commission's "scheme of regulation rests on the assumption that applicants will supply the Commission with accurate information." Character Policy Statement, 102 FCC 2d 1179, 1210 (1986). The "trait of truthfulness" is one of the two key elements of character necessary to operate a broadcast station in the public interest." The other is reliability in complying with the Communications Act and Commission requirements.

Id. at 1209-1210. Intentional deceptions of the Commission by providing either false information (misrepresentation) or incomplete and misleading information (lack of candor) are viewed as "serious breaches of trust." Id. at 1211. Where inaccurate information results from an intention to deceive, as in this case, total disqualification is warranted.

I.D., ¶331, 10 FCC Rcd at 12062. The undeniable intentional nature of the misconduct and the repeated attempts to deceive the Commission are massive factors against according Trinity the continued privilege of using the nation's airwaves.

D. Frequency and Time Period of Misconduct

TBN's actions in forming and controlling NMTV were a regular and continuing course of misconduct that commenced at least sixteen years ago, from 1980, until after the time when this proceeding commenced. The misconduct took place virtually every time NMTV sought an authorization from the Commission or representations were made concerning NMTV's status. The Presiding Judge's findings cover the period from September 1980, when Translator TV, Inc. was formed, up through 1993, when Armando Ramirez was appointed to the NMTV Board. I.D., ¶¶124-130 (10 FCC Rcd at 12038-12039). The Presiding Judge found that the assignment applications filed by NMTV for the Odessa station (filed February 1987), the Portland station (filed December 1987), and the Wilmington station (filed March 1991) represented serious abuses of the Commission's processes. I.D., ¶329 (10 FCC Rcd at 12061). He also concluded that NMTV's repeated claims of minority preferences in LPTV and TV translator applications were

"serious willful and repeated violations of the Communications Act and its Rules." I.D., ¶326 (10 FCC Rcd at 12060). For purposes of the instant Monroe proceeding, Trinity's misconduct must be considered current because it continued through the pendency of the Miami proceeding.¹

It is important that TBN has previously been adjudicated to have engaged in serious misconduct. In International Panorama TV, Inc. (KTBN-TV), FCC 83D-4 (ALJ, released January 25, 1983), an application filed for KTBN-TV was found to have contained material misrepresentations concerning ascertainment. The decision was severely critical of Crouch for signing the application without any meaningful review. Conc. at ¶3. The Presiding Judge correctly stated the significance of the prior misconduct:

In International Panorama TV, Inc. (KTBN-TV), FCC 83D-4 (released January 25, 1983), Crouch was found to have abdicated responsibility to assure himself that all representations in a renewal application were true and correct. However, as reflected in this record, his previous misconduct has had no deterrent effect on Crouch and TBN.

I.D., n.50 (10 FCC Rcd at 12062).

E. Involvement of Owners

Judge Chachkin's decision found that Paul Crouch, Trinity's President, a director, and dominant principal, played the primary role in the misconduct and abuse of process. Since Trinity is a non-stock corporation, Crouch

¹ Glendale filed its Miami application and petition to deny in December 1991.

must be considered an owner of Trinity for Commission purposes. Roanoke Christian Broadcasting, Inc., 52 RR 2d 1725 (Rev. Bd. 1983). The decision regularly refers to misconduct by Crouch. I.D., ¶¶306, 309, 323, 325, 330, 331 (10 FCC Rcd at 12057-12058, 12060-12062). Furthermore, Norman Juggert, a second director of Trinity, also played a very active role in Trinity's unlawful control of NMTV. NMTV directors Espinoza, Aguilar, and Hill all viewed Juggert as NMTV's lawyer. Tr. 4319-4320, TBF Ex. 107, Pp. 36-37, Tr. 1926, 1932-1933. For NMTV, Juggert: handled a lease problem, prepared the name change and written actions in lieu of meetings, recommended errors and omissions insurance to Jane Duff, prepared the business services agreement, prepared the production agreement for the Joy program, drafted the TBN-NMTV promissory note, and attempted to implement a proposed loan from NMTV to Community Brace, Inc., a company controlled by Hill. Tr. 3670-3673, 3666-3669, 3664-3665, 3775-3776, Glendale Ex. 218. Even though Juggert repeatedly claimed he was representing TBN (not NMTV) in many of these transactions, others perceived him to be working for NMTV, and nobody ever saw any conflict of interest, even when the two companies had different interests.

F. Scope of Misconduct

No valid argument can be made here that any sanction should be limited to the Miami station because the misconduct was limited to that station. The misconduct in this proceeding occurred at the highest levels of the company and

involved Trinity's obsession with controlling as many stations as it could. The Presiding Judge recognized that Crouch's motive was "to acquire and utilize all available communications media to carry out TBN's mission." I.D., ¶330 (10 FCC Rcd at 12061). Crouch and Trinity decided to deceive the Commission and to act in flagrant disregard of its policies in carrying out their goal.

G. Deterrence

All of the major factors cited above which the Commission relies upon in determining whether misconduct requires denial of a license point towards a conclusion that Trinity is not qualified to hold the license for its Monroe station. In light of this overwhelming support for holding Trinity unqualified to hold the Monroe license, the Commission must conclude that taking action against the Monroe license is necessary to act as an adequate deterrent against misconduct.

First, Judge Chachkin's decision finds that from 1987 to 1991, Trinity controlled two more television stations than the Commission's rules allowed. I.D., ¶329 (10 FCC Rcd at 12061). If the Commission decided that Trinity's misconduct should only impact one license, it would allow Trinity to retain a license that it never should have been allowed to obtain in the first place. If Trinity had informed the Commission of the true relationship between it and NMTV, the Commission would never have allowed the two entities to own more than twelve full power licenses. When Trinity acquired the Monroe

permit in 1989, Trinity, other Trinity companies and NMTV owned a total of thirteen commercial full power stations. The Commission would not have allowed Trinity to acquire the Monroe construction permit if it had known Trinity controlled NMTV. If the Commission finds Trinity basically qualified to hold the Monroe license notwithstanding its misconduct, it will have been rewarded for its deception and abuses.

Second, Trinity has been unrepentant about its conduct to this very day. In a newsletter written by Paul Crouch shortly after the decision in the Miami proceeding, he implied that the Presiding Judge ruled as he did because he was allegedly not sympathetic to Trinity's faith.² Trinity's attacks on the Presiding Judge, and Crouch's statement that "I would rather be charged by men for trying to secure too many stations, than to be charged by God for trying to secure too few!", show that Crouch still believes that controlling the maximum number of television stations is more important than being honest with the Commission and complying with Commission rules. His current attitude confirms that he and Trinity lack the truthfulness and reliability all Commission licensees must have. Character Policy Statement, supra, 59 RR 2d at 809.

H. Conclusion Re Trinity's Qualifications

Once the Commission affirms the decision in the Miami proceeding, no legal or equitable basis exists for holding

² A copy of this newsletter is attached to this pleading.

Trinity qualified to hold the Monroe license. Trinity abused the Commission's processes and deliberately attempted to deceive the Commission concerning the relationship between Trinity and NMTV. There is no meaningful distinction between Miami and Monroe that would justify a different result in the two cases. All of the factors the Commission looks at in determining the proper sanction for misconduct support the disqualification of Trinity in the Monroe proceeding. Accordingly, Glendale asks the Commission to rule that Trinity lacks the basic qualifications needed to obtain a grant of the WHSG(TV) renewal application.

IV. THE GLENDALE SHORT-SPACING ISSUE

Once Trinity is disqualified, the short-spacing issue added against Glendale must be resolved to determine whether Glendale's application can be granted. The hearing on that issue has been held and proposed findings and conclusions have been filed by Glendale, Trinity, and the Mass Media Bureau (which supports the resolution of the issue in Glendale's favor). There is no reason to delay the resolution of the short-spacing issue. If Trinity is disqualified, this case can be resolved without reference to the standard comparative issue, so the freeze of comparative proceedings³ would therefore be inapplicable. It would disserve the public interest to delay the proceeding by resolving Trinity's basic

³ FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994).

qualifications and then waiting for the engineering issue to be resolved separately. Glendale urges the Commission to either order the Presiding Judge to immediately issue an initial decision on that issue and allow the parties to file immediate exceptions to that decision, or to have the Presiding Judge certify the record to the Commission so the Commission could decide the issue simultaneously with the resolution of Trinity's basic qualifications.

V. CONCLUSION

Accordingly, Glendale asks the Commission to rule once it issues a decision in MM Docket No. 93-75 that Trinity lacks the basic qualifications to obtain a renewal of the WHSG(TV) license. It also asks the Commission to order to expedite the resolution of the pending short-spacing issue in the manner described in Section IV, supra.

Respectfully submitted,

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Date: April 29, 1996

CERTIFICATE OF SERVICE


I, Kathryn M. Damm, a legal assistant employed by Bechtel & Cole, Chartered, do hereby certify that on the 29th day of April, 1996, a copy of the foregoing "Motion for Ruling re Trinity's Qualifications and Related Relief" was sent first-class mail, postage prepaid to the following:

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